

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 744 of 1995

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MAHESH RAMDIN KNOJYA

Versus

MANAGER, AIR INDIA

Appearance:

MS JAYSHREE C BHATT for Petitioner
NANAVATI ASSOCIATES for Respondent No. 1
MR JD AJMERA for Respondent No. 2

CORAM : THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

Date of decision: 20/08/96

ORAL JUDGEMENT

Admit. By consent to be heard forthwith.

Mr.K.S.Nanavati, advocate for Respondent no.1 and
Mr.J.D.Ajmera, for Respondent no.2 waive service of

admission.

It is the case of the appellant that after qualifying in written and oral test he was selected and appointed as handyman by Air India. Between September 1981 and until he was terminated on 31st July 1986, periodically appointments were made in his favour. However, by an oral order his services were terminated on 31st July 1986.

The petitioner approached the Assistant Commissioner of Labour in July 1990 with grievance that his services could not have been terminated as he has completed over 240 days. Conciliation proceedings before the Assistant Labour Commissioner ended in failure and the Central Government vide its order dt. 11th September 1991 denied the reference under Sec.10 (1)(d) of the Industrial Disputes Act, 1947. Despite reference was denied in September 1991, the petitioner did not take up proceeding for long period, but indeed approached this court in Spl.C.A.No.227 of 1994 seeking direction to respondent no.2 to make necessary reference to the Industrial Tribunal.

The learned Single Judge by the impugned order dt. 15.2.95 rejected Spl.C.A. in limine on the ground that the appellant was dismissed from service in the year 1986 and dispute was raised some time in the year 1990 and though the reference was denied in September 1991, the Spl.C.A. was instituted in the year 1995 which was grossly delayed. The impugned order is challenged in the present Letters Patent Appeal.

The grievance made in the appeal is that the appropriate Government could not have gone on the merits of the case of the appellant and reject the reference to the Industrial Tribunal. It is urged that it is not open to the appropriate Govrnment while deciding the question of reference under Sec.10(1)(d) of the I.D.Act to go into the merits of the matter and, therefore, the order dt. 11th September 1991 rejecting the reference cannot be sustained.

We find considerable merit in the contention raised on behalf of the appellant. The Desk Officer of respondent no.2 rejected the request to make reference by holding-

"since the termination of service of the workman was under a stipulation in the contract of employment, the termination would not be a retrenchment under the provisions of the

Industrial Disputes Act."

From the aforesaid, it is clear that the officer concerned decided the merits of the matter which was indeed required to be decided by the Tribunal. It is well settled by now that reference of a dispute cannot be denied except on limited grounds which need not be cited in this order as there is no dispute about the same.

It is indeed further true that the petitioner's service was terminated in the year 1986 and the reference was rejected in the year 1991 and the petitioner instituted Special Civil Application in December 1994. Nevertheless the fact remains that there is no limitation prescribed for seeking reference under the Industrial Disputes Act. Though there is a delay as held by the learned Single Judge, we are otherwise satisfied that the appellant was employed in small job of handyman and in that view of the matter, deserves some consideration. In addition a statement was made on behalf of the appellant by his counsel Ms.Jaishree C.Bhatt that in the event the Tribunal decides the Reference in favour of the appellant, the appellant would not claim backwages and he reinstatement ntent with wages from the date of his retrenchment in the event it is so ordered. In this view of the matter, the appeal succeeds. The impugned order dt. 11th September 1991 made by the Desk Officer of respondent no.2 and the order of the learned Single Judge in Spl.C.A.No.227/94 dt. 15.2.1995 is quashed and set aside and respondent no.2 is directed to make Reference under Sec.10(1)(d) of the Industrial Disputes Act, 1947 to the appropriate Industrial Tribunal.

The appeal is allowed. The parties are directed to bear their own costs in view of the fact that there was no strong opposition from the respondents.

Dt. 20.8.1996. (G.D.KAMAT C.J.)

(C.K.THAKKER J.)
